

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| THOMAS KERN and DEBRA KERN, | : | CIVIL ACTION NO. 1:04-CV-2370 |
| | : | |
| Plaintiffs | : | (Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| NATIONAL R.V. INC., and | : | |
| GRUMBINE'S R.V. CENTER, | : | |
| | : | |
| Defendants | : | |

ORDER

AND NOW, this 14th day of November, 2005, upon consideration of defendants' motion to strike (Doc. 23) plaintiffs' expert testimony and expert report, and it appearing that plaintiffs have not filed a response to the motion, see L.R. 7.6 ("Any party opposing any motion shall file a responsive brief . . . [or] be deemed not to oppose such motion."), that the expert report, submitted as a rebuttal opinion, does not contradict or rebut the report submitted by defendants but proffers new opinions and information in support of plaintiffs' case-in-chief, and it further appearing that plaintiffs were directed by order of court to disclose any expert reports on or before August 1, 2005 (see Doc. 15), see FED. R. CIV. P. 26(a)(2) (requiring that non-rebuttal expert reports be submitted "at least 90 days before the trial date"), that plaintiffs' expert report was not disclosed until September 20, 2005 (see Doc. 23 ¶ 9), and that plaintiffs have not proffered any justification for their failure to timely disclose the report, see FED. R. CIV. P. 37(c)(1) ("A party that without substantial justification fails to disclose [expert testimony] . . . is not . . .

permitted to use as evidence . . . any witness or information not so disclosed.”), and the court finding that the admission into evidence of plaintiffs’ expert testimony or report , at this stage in the proceedings, would be prejudicial to defendants and disrupt the orderly and efficient trial of this case, see Nicholas v. Pa. State Univ., 227 F.3d 133, 148 (3d Cir. 2000) (stating that prejudice to opposing party and disruption to judicial proceedings are factors to consider in excluding evidence under Rule 37(c)), it is hereby ORDERED that:

1. The motion to strike (Doc. 23), CONSTRUED as a motion to exclude at trial plaintiffs’ expert testimony and report, is GRANTED as so construed. See FED. R. CIV. P. 37(c)(1); Nicholas v. Pa. State Univ., 227 F.3d 133, 148 (3d Cir. 2000); see also L.R. 7.6.
2. Plaintiffs shall be prohibited from introducing at trial any expert testimony or expert reports. (See Doc. 23, Ex. C.)

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge